



April 22, 2005

Ms. Paula Higashi  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814



Dear Ms. Higashi:

This letter is in reference to a Statement of Decision that the Commission on State Mandates is reconsidering pursuant to a legislative request: Photographic Record of Evidence. In the Legislative Analyst's Office's 2003 publication *New Mandates: Analysis of Measures Requiring Reimbursement*, we suggest that the commission's decision may be in error because it did not examine the subject test claim in light of the changes in state-local court funding responsibilities. This letter responds to the questions you have raised with me regarding this analysis.

### **Background**

Between 1985 and 1990, a time when *counties* were responsible for most trial court operation and facility costs, the County Clerk's Association sponsored legislation to establish alternate procedures for handling and storing dangerous or bulky court exhibits (Chapter 875, Statutes of 1985, [AB 556, Frazee], Chapter 734, Statutes of 1986 [AB 2715, Frazee], and Chapter 382, Statutes of 1990 [AB 3408, Frazee]). Among other things, these measures required local law enforcement agencies to:

- Provide a photographic record for evidence that the court determined poses a health, safety, security, or storage problem.
- Provide a certified chemical analysis of evidence that poses a health hazard.
- Store certain evidence that poses a health or safety risk.

### **When First Enacted, the Subject Legislation Simply Shifted Local Duties**

When the Legislature considered Chapter 875 and the subsequent measures, the County Clerk's association (sponsors of the legislation) claimed that the bills would be "cost neutral" to counties. That is, any increased county district attorney and sheriff evidence storage and handling costs from the measure would be offset by decreased county court costs. Government Code Section 17556(e) specifies that a measure is not a mandate if it does not impose *net* costs on a group of local governments. For this reason,

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it does not appear that Chapter 875 imposed a new duty or higher level of service on counties at the time the measure was enacted.

According to the commission's administrative record, city law enforcement agencies assert that Chapter 875 increased their evidence storage and processing costs. That is, the procedures to reduce county court costs effectively increased city law enforcement agency costs. To the extent that this is true, we note that the courts previously have found that shifts of responsibility or costs among local agencies do not constitute state-reimbursable mandates (*City of San Jose v. State of California* [1996] 45 Cal.App.4<sup>th</sup> 1802).

### **Commission Considered Measure After State Assumed Court Responsibility**

More than a decade after passage of Chapter 875, the Legislature began a process of transferring responsibility for trial court costs from counties to the state. Most notably, Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle), established the Trial Court Trust Fund to support the operation of the trial courts. This act shifted fiscal responsibility for the trial courts from the counties to the state. This measure resulted in a major new financial responsibility for the state's General Fund and provided significant general-purpose fiscal relief to counties by capping their future financial obligations for court operations.

In 1998, one year after the Legislature shifted financial responsibility for the courts from counties to the state, the City of Los Angeles' Police Department filed a claim alleging that Chapter 875 and its later amendments (Chapter 734 and Chapter 382) imposed a state-reimbursable mandate. The City did not reference Chapter 850 in its claim.

Our review indicates that it is difficult to determine whether Chapter 875, Chapter 734, and Chapter 382 imposed a state-reimbursable mandate without reviewing the measure in its historic context. We recommend that the commission consider the following questions as part of its reconsideration of this mandate:

- Did Chapter 875, Chapter 734, and Chapter 382 impose a mandate on cities and/or counties at the time of their enactment?
- Are there any restrictions on commission consideration of Chapter 850 today, given that this measure was not included in the City's original test claim and the statute of limitation on filing test claims for this legislation has expired?
- What provisions of Article XIII B, Section 6, or court rulings suggest that a subsequent legislative measure to provide local fiscal relief (Chapter 850) can transform an earlier legislative measure into a state-reimbursable mandate?
- More generally, if the state assumes responsibility for a local program, can this action recast preexisting inter-local government requirements as state-

reimbursable mandates? As an example, if the state were to assume responsibility for county jails, would city booking fees be considered a state-reimbursable mandate?

- If the commission, upon reconsideration, finds that Chapter 875, Chapter 734, and Chapter 382 constitutes a mandate, should county fiscal relief from trial court funding reform be counted as "offsetting revenues" in county mandate claims?

Should you have any questions regarding this letter or wish additional information, please contact me at 319-8315.

Sincerely,

A handwritten signature in cursive script that reads "Marianne O'Malley". The signature is written in dark ink and is positioned above the printed name.

Marianne O'Malley  
Principal Fiscal and Policy Analyst